

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MR. LUIS RANGEL, et al.

Plaintiffs,

VS.

ADTALEM GLOBAL EDUCATION,
INC., FORMERLY KNOWN AS DEVRY
EDUCATION GROUP, INC.; AND
DEVRY UNIVERSITY, INC.,

Defendants.

SA-18-CV-00082-JKP

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

To the Honorable United States District Judge Jason K. Pulliam:

This Report and Recommendation concerns the claims of Plaintiff Lisa Howard. All non-dispositive pretrial matters in this case have been referred to the undersigned for disposition pursuant to Western District of Texas Local Rule CV-72 and Appendix C. The undersigned has authority to enter this recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons set forth below, it is recommended that Howard's claims be dismissed for want of prosecution.

I. Recommendation

Plaintiff Lisa Howard is one of over one hundred Plaintiffs in this action. All but Howard and one other Plaintiff signed a stipulation of dismissal with prejudice of all claims against Defendants after the parties reached a settlement agreement. Counsel for Plaintiffs moved to withdraw their representation of Howard due to Howard's failure to communicate with counsel or to opt out of a related class action pending in Illinois by the deadline imposed by that court. After the Court granted counsel's withdrawal on January 5, 2021, the Court ordered Howard to file a notice with the Court within 30 days of her intent to proceed with her claims in

this case *pro se* or to obtain substitute counsel [#135]. The Court warned Howard that a failure to do so could result in the dismissal of her claims for failure to prosecute and to comply with a court order pursuant to Rule 41(b). To date, Howard has not filed the ordered advisory or obtained substitute counsel to represent her in this action.

Rule 41 provides for the dismissal of a plaintiff's claims "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order." Fed. R. Civ. P. 41(b). A district court "possesses the inherent authority to dismiss the action *sua sponte*, without motion by a defendant." *McCullough v. Lynaugh*, 835 F.2d 1126, (5th Cir. 1988).

Having considered the record in this cause, the undersigned recommends that the claims of Plaintiff Lisa Howard be **DISMISSED** for want of prosecution pursuant to Rule 41(b).

II. Instructions for Service and Notice of Right to Object/Appeal

The United States District Clerk shall serve a copy of this report and recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the clerk of court, or (2) by mailing a copy to those not registered by certified mail, return receipt requested. Written objections to this report and recommendation must be filed **within fourteen (14) days** after being served with a copy of same, unless this time period is modified by the district court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The party shall file the objections with the Clerk of Court and serve the objections on all other parties. A party filing objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusive or general objections. A party's failure to file written objections to the proposed findings, conclusions and recommendations contained in this report shall bar the party from a *de novo* determination by the district court. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985);

Acuña v. Brown & Root, Inc., 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to file timely written objections to the proposed findings, conclusions and recommendations contained in this report and recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the un-objected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

SIGNED this 16th day of March, 2021.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE